

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN HONCOOP,) Case No. C06-1647-RSM-JPD
Plaintiff,)
v.)
MICHAEL J. ASTRUE, Commissioner,) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)

I. INTRODUCTION AND SUMMARY CONCLUSION

On November 13, 2007, the court ordered that the decision by the Commissioner of the Social Security Administration (“Commissioner”) be reversed and benefits be awarded. Dkt. No. 22. The present matter comes before the Court on plaintiff’s motion for attorney’s fees, costs, and expenses under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. Dkt. No. 24. Defendant filed a timely response opposing the motion. Dkt. No. 26. This matter was referred to the undersigned Magistrate Judge. Dkt. No. 28. After careful consideration of the pleadings, supporting materials, the governing law and the balance of the record, the Court recommends that plaintiff’s motion be GRANTED and that she be awarded fees of \$7,288.96 and costs of \$470.55, for the reasons set forth below.

II. FACTS AND PROCEDURAL BACKGROUND

The plaintiff filed a complaint against the Commissioner challenging a decision that

01 failed to find her disabled. Her attorney submitted a twenty-four page opening brief asserting
 02 that substantial evidence did not support the five-step decision of the Administrative Law
 03 Judge (“ALJ”). Dkt. No. 15. The Commissioner opposed the relief sought. Dkt. No. 19.
 04 The plaintiff filed a reply brief. Dkt. No. 20. The matter was deemed submitted and oral
 05 argument was not required.

06 A Report and Recommendation issued on October 18, 2007, recommending that the
 07 case be reversed and that plaintiff be awarded benefits. Dkt. No. 21. No objections were filed,
 08 and on November 13, 2007, the Honorable Ricardo Martinez adopted the Report and
 09 Recommendation and judgment was entered accordingly. Dkt. Nos. 22, 23. Plaintiff then
 10 sought EAJA fees, asserting that she was the prevailing party and so entitled. Dkt. No. 23.
 11 Defendant challenged this motion for fees, claiming that the hours charged were excessive.
 12 Dkt. No. 26..

13 III. DISCUSSION

14 A. Prevailing Parties Are Entitled Reasonable Fees

15 The EAJA entitles prevailing parties to “reasonable fees and expenses of attorneys.”
 16 28 U.S.C. § 2412(b). The EAJA applies in cases of successful Social Security appeals.
 17 *Russell v. Sullivan*, 930 F.2d 1443 (9th Cir. 1991). Reasonable fees are calculated based on
 18 “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly
 19 rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The only challenge made by the
 20 Commissioner in this case is as to the amount of time plaintiff’s counsel expended in the case.
 21 There are no objections to the rates requested or to the costs sought. Dkt. No. 26. Plaintiff’s
 22 counsel spent a total of forty-four hours, including two hours for the preparation of the
 23 pending motion. He supported his fee request with a declaration setting out the specific tasks
 24 performed and the time incurred for each task. Dkt. No. 25. The Commissioner argues that
 25 forty-four hours is excessive, but fails to identify any unnecessary tasks or those that might
 26 involve over-billing. The Commissioner argues that plaintiff should be limited to compensation

01 for no more than thirty-seven hours. Dkt. No.26.

02 B. Plaintiff's Fee Request Is Reasonable

03 The Court finds that the requested award is reasonable and recommends that it be
04 awarded. The Commissioner baldly asserts that this case should have taken no more than
05 thirty-seven hours, by comparing the forty-four hours actually incurred to comments made by
06 the courts in *Spruyl v. Bowen*, 671 F. Supp. 302, 306-07 (M.D. Fla. 1988) and *Patterson v.*
07 *Apfel*, 99 F.Supp. 2d 1212 (C.D. Cal 2000). In *Patterson*, the court determined that a thirty-
08 seven hour total was appropriate in a “routine disability” case, including oral argument. *Id.* at
09 1215. However, in *Patterson*, the court affirmed the plaintiff’s request for the award of thirty-
10 seven hours of work on the case. The court denied the Commissioner’s request to award less
11 than all the hours requested, and cited to a number of cases in which fee awards were based on
12 hours worked ranging from twenty hours to more than sixty hours. *Id.*, at n. 2.

13 These cases provide an anecdotal background to consider the request by the
14 Commissioner, but little else. As noted above, *Hensley* is the starting point for considering fee
15 applications, namely the product of the number of hours reasonably expended multiplied by the
16 applicable hourly market rate for the legal services. *Id.*, at 433. This methodology was also
17 adopted for social security attorney’s fee requests under the EAJA. *See Gisbrecht v.*
18 *Barnhart*, 535 U.S. 789, 796 (2002). It bears repeating that here there are no disputes
19 regarding the success achieved by the plaintiff, the reasonableness of the hourly rate charged,
20 the specificity of the plaintiff’s fee petition and affidavit, and the failure of the Commissioner to
21 identify any areas of alleged over-billing. Instead, the Commissioner asks this Court to reduce
22 the fee request by seven hours, simply it exceeds by seven hours the time awarded in *Spruyl* or
23 *Patterson*. The Commissioner does not even attempt to compare the complexities of this case
24 to the issues presented in *Spruyl* or *Patterson*. There is no authority for this Court to reduce a
25 properly supported fee application using the “methodology” urged by the Commissioner.

26

IV. CONCLUSION

02 Plaintiff's motion for fees and costs (Dkt. No. 24) should be GRANTED, and
03 plaintiff's attorney should be awarded fees in the amount of \$7,288.96, based upon 44 hours
04 of work, and costs in the amount of \$470.55 under the EAJA, 28 U.S.C. § 2412 and 1920. A
05 proposed Order accompanies this Report and Recommendation.

DATED this 16th day of June, 2008.

James P. Donohue

JAMES P. DONOHUE
United States Magistrate Judge